Wafula v Lipton Teas and Infusion Kenya Plc (Formerly Ekaterra Tea Kenya Plc) (Cause E023 of 2024) [2025] KEELRC 3102 (KLR) (31 October 2025) (Judgment)

Neutral citation: [2025] KEELRC 3102 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO

CAUSE E023 OF 2024

J RIKA, J

OCTOBER 31, 2025

BETWEEN

CALEB WNJALA WAFULA ..... CLAIMANT

AND

LIPTON TEAS AND INFUSION KENYA PLC (FORMERLY EKATERRA TEA KENYA PLC) ..... RESPONDENT

JUDGMENT

1. The Claimant filed his Statement of Claim, dated 28th June 2024.
2. He avers that he was employed by the Respondent as a Tea Plucker / General Worker for over 8 years, between July 2018 and 28th May 2024, when the Respondent terminated his contract.
3. He was earning a monthly salary of Kshs. 23,312,49, at the time of termination.
4. He was not heard before termination. Hearing which was intended to take place on 28th March 2024, did not take place. Attempts by the Claimant to reach the Head of the plantations were frustrated. He was locked out, on 2nd June 2024. He was not issued notice of termination.
5. He prays for: -
    a. 2 months' salary in lieu of notice at Kshs. 40,565.60.
    b. Gratuity for 8 years completed in service at Kshs. 160,000.
    c. Damages for lost employment at Kshs. 243,392.60.
    d. Leave at Kshs. 18,783.
    e. 1-way bus fare at Kshs. 2,000.

    Total...Kshs. 464,743.16.

f. Costs.

g. Interest.

h. Any other suitable relief.

6. The Claim is opposed through the Respondent's Amended Statement of Response, amended on 28th April 2025.

7. It is the Respondent's position that the Claimant was employed by the Respondent as a General Worker, on 1st January 2011.

8. In December 2023, he and his son were found unlawfully cutting the Respondent's indigenous tree, contrary to the Respondent's policy on protection of physical, financial and intellectual assets. It was also contrary to the CBA applicable to the parties.

9. He was issued a letter to show cause. He replied. His reply was considered. He was taken through a disciplinary hearing. He was summary dismissed lawfully and fairly.

10. He is not entitled to notice pay, having been summarily dismissed. He similarly is not entitled to gratuity, having been summarily dismissed. Likewise, the prayer for damages is denied, the Claimant having been dismissed lawfully and fairly. He was paid pending leave, as part of his terminal dues. Bus fare was paid as part of terminal dues. His certificate of service is ready for collection.

11. The Claimant, and Respondent's Area Manager Richard Guto, gave evidence for the respective Parties on 2nd July 2025, closing the hearing. The Claim was last mentioned on 31st July 2025, when the Parties confirmed filing and exchange of their submissions.

12. The Claimant relied on his witness statement and documents [1-6], in his evidence-in-chief.

13. He underscored that he was not given a fair chance, to defend himself. He was issued a 4-day notice to defend himself. He was falsely accused of cutting indigenous tree. He worked for 13 years. He was denied gratuity, notice, annual leave pay and bus fare.

14. Cross-examined, he stated that he was paid Kshs. 851 daily. He was familiar with company policies. Policy prohibited cutting of indigenous trees. He did not cut any indigenous tree. He was found splitting firewood. The Respondent alleged he was cutting indigenous tree.

15. He recorded a statement on investigation. He stated that he found a tree that had already fallen down. Investigation took place. The investigation report was produced at the disciplinary hearing. The Claimant stated that he was cutting firewood from an indigenous tree which had fallen on the ground.

16. He was issued a letter to show cause. He replied. He was invited for disciplinary hearing. He was advised to attend hearing in the company of a colleague, or a trade union representative. He was heard. Employees at the farm were allowed to collect dried firewood. The Claimant was found using an axe. He was dismissed and advised on his right of appeal. His salary is shown in his pay slips on record. He was not aware of deposit of Kshs. 10,000 made to his account by the Respondent. He did not clear with the Respondent.

17. Redirected, he told the Court that the investigation report was not read to him. He did not receive any money upon dismissal. He was splitting firewood, not cutting trees. Policy does not prohibit splitting of dried firewood. Employees collected firewood every Sunday.

18. Area Manager Richard Guto, relied on his witness statement and documents filed by the Respondent [1-13], in his evidence-in-chief. His work includes people and forest management. There is a workplace

policy, barring Employees from cutting indigenous trees. They can collect fallen branches. Managers notify the Respondent, if there is a fallen tree at the farm. The Respondent then contracts a service provider to cut and split the tree. Firewood from fallen trees is distributed to the Employees this way. The Claimant was found cutting indigenous tree contrary to this policy. He was heard and dismissed fairly and lawfully.

19. Cross-examined, Guto told the Court that collection of firewood is allowed. Employees are allowed to pick small fallen branches. During the disciplinary hearing, it was established that the Claimant cut a prohibited tree. He disputed that he did so. Investigation team confirmed that he did so. The team was selected by the Respondent. Guto was a member. There were no photos of cut trees exhibited at the disciplinary hearing. He was not issued a warning. Warning depended on the severity of the offence. The Respondent did not dismiss the Claimant, to avoid paying his terminal benefits. He was entitled to gratuity under the CBA. It was not paid. He was summarily dismissed and therefore, not paid notice and gratuity. He was found with an axe and a machete.

20. Redirected, Guto told the Court that the Claimant admitted at the disciplinary hearing, that Employees are not allowed to cut trees. They are only allowed to collect firewood. Investigation team was an independent team. Upon summary dismissal, an Employee was not entitled to notice and gratuity, under the CBA.

21. The submissions filed by the Parties underline their respective positions, as captured in the pleadings and evidence, summarized by the Court in the preceding paragraphs.

22. The issues are: whether termination was procedurally fair under Sections 41 and 45 of the *Employment Act*; whether it was based on valid reason or reasons, under Sections 43 and 45 of the *Employment Act*; and whether the remedies sought are merited.

The Court Finds: -

23. The Claimant was employed by the Respondent as a General Worker / Tea Plucker.

24. He pleads that he was employed in June 2018, and worked for 8 years. The correct date as pleaded by the Respondent is 1st January 2011, and the period of service was 13 years. The letter of appointment on record confirms that he was employed on 1st January 2011, on permanent terms.

25. He was dismissed with effect from 28th May 2024, on account of gross misconduct, under clause 26 [e] of the CBA, and Sections 44 [3] and 44 [4] [e] of the *Employment Act*.

26. The letter explains that in December 2023, the Claimant and his son, were found cutting and bucking an indigenous tree, at arboretum within the tea estate, by Respondent's security personnel.

27. He was found with a panga and an axe. The tree was freshly cut down. Confronted by security personnel, the Claimant reportedly told them that the tree was dry. He also sought their pardon, stating in Kiswahili '' Naomba Msamaha. Mkitaka tumalize kivyetu'' [I beg your pardon. If you so wish, we can resolve this between us/ our own way].

28. The Claimant faults procedure at paragraph 5 of his Statement of Claim, alleging that he was not granted an opportunity to be heard.

29. The allegations against him were subjected to investigations. He was issued a letter to show cause dated 25th March 2024. He replied on 28th March 2024.

30. However, the letter to show cause was purposeless, because it also invited the Claimant for hearing, on 28th March 2024.

31. When did the Respondent consider the Claimant's reply to the letter to show cause, and conclude that his explanation was inadequate, warranting a disciplinary hearing?

32. The letter to show cause was perfunctory, and not intended to offer the Claimant a genuine chance to explain himself. His reply denying the allegations is dated 28th March 2024, the same date he was scheduled to be heard.

33. A letter to show cause is a preliminary disciplinary step. It communicates the allegations, and calls on the Employee to give an explanation. At the time it is issued, no decision to have a disciplinary hearing, has been taken. It is integral to a fair procedure. It cannot fairly, serve as an invitation to a disciplinary hearing.

34. Procedure at this preliminary stage, was flawed.

35. There is evidence however, that the Claimant was heard at length, on 28th March 2024. He was accompanied by a colleague and shop steward, Peter Cheruyiot. The charges were read to the Claimant. He denied the charges and witnesses were called. Security Officers Martin Koskei and Charles Bett gave evidence.

36. The Claimant was given adequate facility to state his case, and question witnesses for the Respondent. Both he and his colleague, presented submissions at the end of the hearing. He signed the minutes, as did his colleague.

37. A decision was made 2 months later, on 28th May 2024, to summarily dismiss the Claimant. The letter of summary dismissal explained to the Claimant that he had a right of appeal lasting 7 days, from the date of dismissal.

38. Procedure was faulty with respect to the letter to show cause, which was merged with the invitation to disciplinary hearing. Hearing itself as recorded, took place on 28th March 2024, and appears to have been conducted fairly, with the full participation of the Claimant and his colleague, shop steward Peter Cheruyiot.

39. Procedural fairness entails much more than mere hearing of an Employee before termination, under Section 41 of the *Employment Act*. Section 45 [5] [a] of the Act requires the Court, in determining if termination is just and equitable, to consider procedure adopted by the Employer in reaching the decision to dismiss the Employee; communication of that decision to the Employee; and handling of any appeal against the decision. The Court must therefore look into procedure adopted prior to the hearing, during the hearing and post the hearing.

40. The reason invoked by the Respondent in justifying termination was valid under Section 43 and 45 of the *Employment Act*.

41. The Respondent has a policy on conservation of indigenous trees, within its farm. It is a laudable corporate policy, on protection of our environment. Gathering of firewood by Employees is regulated. The Claimant was familiar with the policy, having been in employment for 13 years. He conceded he was aware, in his evidence.

42. Security Officer Martin Koskei confirmed that he, accompanied by 2 Police Officers, found the Claimant and his son cutting an indigenous tree. The Claimant had already felled the tree, while his son was splitting it. He sought pardon from Koskei, offering that if Koskei and the other officers so wished, the violation could be settled ''Kivyetu' [Kiswahili for compromise ''in our own way] .

43. Security Officer Charles Bett confirmed that he heard the sound of trees being cut at the arboretum. He reported to Koskei, who drove to the scene and found the Claimant in the act of cutting down and splitting an indigenous tree.

44. The Claimant is not recorded to have asked useful questions to the above witnesses, and among his questions before the Court, was whether photographs of the trees were produced at the disciplinary hearing. This was not a helpful question considering that the Respondent was only required to show, that it had genuine belief, under Section 43 of the *Employment Act*, that the Claimant had committed an employment offence. There was no requirement for production of photographic evidence, to establish an employment offence.

45. In his own evidence, the Claimant confirmed that he was found by the Security Officers with his son, armed with an axe and a machete, splitting firewood. He alleged that he found the tree already on the ground. He confirmed that company policy only allowed Employees to collect dried wood. Aked why he was found in the forest with an axe and a panga, he sought forgiveness. He again indicated that he was sorry at the end of the disciplinary hearing, while all the shop steward could say, was that the Respondent has not educated its Employees properly on indigenous trees policy. The Claimant himself never feigned ignorance of the policy, anywhere in his evidence at the disciplinary hearing, and before the Court.

46. The evidence by the Claimant and by the Security Officers gave the Respondent genuine belief and reasonable ground to conclude that the Claimant was involved in an act of gross misconduct, contrary to the Respondent's workplace policy and the prevailing CBA.

47. On remedies, the prayer for compensation for unfair and unlawful termination, is not merited. There was valid reason justifying termination, and the hearing on 28th March 2024 was largely conducted fairly. The Claimant did not articulate the prayers for leave and bus fare, in his evidence. The Court is not able to accede to these prayers.

48. However, there was a procedural flaw in the letter to show cause and invitation to disciplinary hearing, as pointed out above. While the flaw is not adequate to warrant grant of compensatory award, it is sufficient to lead to a declaration that termination was unfair. The decision to summarily dismiss the Claimant, and deprive him of gratuity after 13 years of service, did not achieve a fair outcome overall.

49. The Court would therefore reduce summary dismissal, to regular termination, enabling the Claimant recover gratuity for his 13 years completed in service, and notice of 2 months, under the CBA.

50. Clause 32 of the CBA offered gratuity to Employees with 10 complete years of service, at the rate of 22 days' salary, for each complete year of service. Clause 2 [c] offered Employees with a minimum of 5 years' service, notice on 2 months.

51. The witness for the Respondent vacillated on the question of gratuity, testifying that, '' He was entitled to gratuity under the CBA. It was not paid. He was not entitled to gratuity and notice, having been summarily dismissed.''

52. The Claimant told the Court that he was paid a daily rate of Kshs. 851. This would translate to a monthly sum of Kshs. 20,424, based on a 6-day working week. The claim that he was paid Kshs. 23,312 monthly, is unsupported in his evidence. It is not consistent with the daily rate of Kshs. 851, given in his cross-examination. He did not clarify if he continued to earn Kshs. 851 on his rest day. The Court can only adopt the rate for 6 days in a week, at Kshs. 851 daily, in accordance with the evidence of the Claimant,

53. The Claimant is granted 22 days' salary for each of the 13 years completed in service, amounting to Kshs. 243,386 in gratuity.

54. He is granted 2 months' salary in lieu of notice, at Kshs. 40,848.

55. No order on the costs.

56. Interest allowed at court rate, from the date of Judgment, till payment is satisfied in full.

It Is Ordered:

a. Termination procedure was flawed and therefore unfair.

b. Summary dismissal decision is commuted to regular termination.

c. The Respondent shall pay to the Claimant gratuity at Kshs. 243,386 and 2 months' salary in lieu of notice at Kshs. 40,848 – total Kshs. 284,234.

d. No order on the costs.

e. Interest allowed at court rate, from the date of Judgment till payment is made in full.

DATED, SIGNED AND DELIVERED ELECTRONICALLY AT KERICHO, PURSUANT TO RULE 68[5] OF THE E&LRC [PROCEDURE] RULES, 2024, THIS 31ST DAY OF OCTOBER 2025.

JAMES RIKA

JUDGE